IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8028 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAVNAGAR MUNICIPAL CORPORATION - Petitioner(s)

Versus

ANIL SHANKARLAL BHATT - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR YV SHAH for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 19/07/2005

ORAL JUDGMENT

1. This petition is directed against the order dated 16th March, 1999 passed by the Industrial Tribunal, Bhavnagar in Reference [I.T.] No. 258 of 1991, whereby the Industrial Tribunal has set aside the penal order

dated 2nd April, 1988 and order dated 24th August, 1987 passed by the petitioner Corporation.

2. The short facts of the case are that the respondent was working as a Clerk with the petitioner Corporation. On 5th August, 1987, while the respondent workman was on duty, a surprise checking was carried out by the Officers of the petitioner Corporation, wherein certain irregularities for non payment of octroi were found. Since the respondent was in charge of the octroi naka, a show cause notice was issued and vide order dated 24th August, 1987, he was placed under suspension.

2.1 Thereafter, departmental inquiry was held against the respondent. Since the charges against the respondent workman were proved, second show cause notice was issued to him, and ultimately, the petitioner Corporation vide order dated 2nd April, 1988 passed a penal order, whereby a penalty of Rs.500=00 as well as non-payment of salary for the suspension period was imposed upon him.

2.2 Being aggrieved by the said order, the respondent workman raised an industrial dispute, which ultimately, came to be referred to the Industrial

Tribunal, Bhavnagar, for adjudication. The Industrial Tribunal, after appreciating the materials produced before it, passed the impugned award. Hence, this petition.

3. Mr. Munshaw learned advocate for the petitioner Corporation has contended that the Industrial Tribunal has committed an error *inasmuch* as it has not appreciated the serious financial irregularities committed by the respondent workman. He has submitted that on account of such misconduct, the petitioner Corporation had to suffer serious losses. He has, therefore, submitted that the Industrial Tribunal has erred in setting aside the penal order dated 2nd April, 1988 passed by the petitioner Corporation.

4.0 I have heard the learned counsel for the respective parties. Having perused the materials placed on record, it transpires that the Industrial Court by exercising powers under Section 11A of the Industrial Disputes Act, 1947 has set aside the penal order dated 2nd April, 1988 passed by the petitioner Corporation. The Labour Court while considering the question of penalty has taken into consideration the findings of the departmental inquiry, wherein also, except negligence in

duty, no other charges were proved against the respondent workman. I am in complete agreement with the reasonings adopted and the findings arrived at by the Industrial Tribunal and do not find any reason to interfere in this petition.

5. However, on the facts of the case, I find that there was no justification for setting aside the direction qua cancellation of suspension period. Hence, the same is required to be quashed and set aside.

6. In the result, the petition is partly allowed. The order dated 16th March, 1999 passed by the Industrial Tribunal, Bhavnagar in Reference [I.T.] No. 258 of 1991, qua the direction of cancellation of the suspension period is quashed and set aside and rest of the order is confirmed. Rule is made absolute to the aforesaid extent with no order as to costs.

6.1. This Court vide order dated 14th November, 2000 has granted stay subject to Section 17-B of the Industrial Disputes Act, 1947. Therefore, the petitioner Corporation is directed to grant all the benefits to the respondent workman within a period of six months from the date of receipt of writ of this order.

[K.S. JHAVERI, J.]

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